

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al.,
Plaintiffs,
vs.
BRAD RAFFENSPERGER, et
al.,
Defendants.

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CIVIL ACTION FILE
NO. 1:17-cv-2989-AT

**MOTION TO STRIKE OR DISREGARD THE CURLING PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION AND FOR
CONSOLIDATED BRIEFING**

Defendants Secretary Raffensperger, in his official capacity as Secretary of the State of Georgia and as Chair of the State Election Board of Georgia; David J. Worley, Rebecca N. Sullivan, Anh Le, and Seth Harp, in their individual capacities and as members of the State Election Board (“State Board Members”); the State Election Board of Georgia (“State Board”) (collectively, the “State Defendants”) file this Motion to Strike or Disregard the Curling Plaintiffs’ Motion for Preliminary Injunction as premature. After this Court issued its Order on Plaintiffs’ Motions for Preliminary Injunctions on August 15, 2019 [Dkt. No. 579], Curling Plaintiffs filed their Motion for Leave to File a Third Amended Complaint the next day. [Dkt. No. 581.] This proposed third

amended complaint seeks to enjoin State Defendants’ implementation of the State’s new paper-ballot voting system which utilizes different voting machines—Ballot Marking Devices (“BMDs”)—than the system challenged by the Plaintiffs’ current complaint. To date, this Court has not ruled on Curling Plaintiffs’ Motion for Leave.

On October 4, 2019, while the Motion for Leave was still pending, Curling Plaintiffs filed their (third) motion for preliminary injunction (the “Motion”) seeking to enjoin State Defendants from using BMDs after January 1, 2020. [Dkt. No. 619.] This Court has reiterated on several occasions that the State’s new BMD voting system does not fall within Curling Plaintiffs’ current complaint. [Dkt. No. 389 at 11:24-12:22; Dkt. No. 579, p. 137.] Thus, Curling Plaintiffs’ Motion seeks relief that falls outside the current complaint, and at best, is premature.

For these reasons, and the reasons set forth in the accompanying Memorandum of Law, State Defendants respectfully request that the Court strike or disregard the Curling Plaintiffs’ Motion for Preliminary Injunction. If the Court grants the Motions for Leave or otherwise proceeds with Curling Plaintiffs’ current motion, State Defendants further request the Court set a

combined briefing schedule for responding to motions for preliminary injunction regarding the BMDs.¹

Respectfully submitted, this 14th day of October, 2019.

/s/ Vincent R. Russo

Vincent R. Russo
GA Bar No. 242628
Josh Belinfante
GA Bar No. 047399
Carey A. Miller
GA Bar No. 976240
Kimberly Anderson
GA Bar No. 602807
Alexander Denton
GA Bar No. 660632
Brian E. Lake
GA Bar No. 575966
ROBBINS ROSS ALLOY
BELINFANTE LITTLEFIELD LLC
500 14th Street NW
Atlanta, GA 30318
Telephone: (678) 701-9381
Facsimile: (404) 856-3250
vrusso@robbinsfirm.com
jbelinfante@robbinsfirm.com
cmiller@robbinsfirm.com
kanderson@robbinsfirm.com
adenton@robbinsfirm.com
blake@robbinsfirm.com

¹ Coalition Plaintiffs have indicated they too intend to file another motion for preliminary injunction but have not indicted when that will be filed. [Dkt. No. 621] at 2, n.1.

Bryan P. Tyson
GA Bar No. 515411
Bryan Jacoutot
GA Bar No. 668272
TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 200
Atlanta, GA 30339
Telephone: (678)336-7249
btyson@taylorenghish.com
bjacoutot@taylorenghish.com

Attorneys for State Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing **MOTION TO STRIKE OR DISREGARD THE CURLING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND FOR CONSOLIDATED BRIEFING** with the Clerk of Court using the CM/ECF system, which will send e-mail notification of such filing to counsel of record.

This 14th day of October, 2019.

/s/Vincent R. Russo